IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5427 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

DEVAN G DESAI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR PF MAKWANA for Petitioner(s) : 1,
MR DIPEN DESAI, ASST. GOVT. PLEADER for Respondents

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/03/2007

ORAL JUDGMENT

1. By way of this petition, under Article 226 of the Constitution of India, the petitioner's main grievance is not promoting him to the post of Professor (Forensic Medicine) on the

ground that he is not M.D. (Forensic Medicine) / Pathology.

2. It is the case on behalf of the petitioner that he was working as Tutor in Forensic Medicine and thereafter, he was promoted to the post of Assistant Professor and he worked as such for 9 (nine) years. It is the case on behalf of the petitioner that in the year 1988, Gujarat Public Service Commission (“G.P.S.C.” for short) advertised for the post of Professor in Forensic Medicine. He applied for the said post and though he was selected, the respondents did not promote the petitioner to the post of Professor in Forensic Medicine, and, therefore, the petitioner has preferred the present Special Civil Application.

3. Affidavit-in-reply is filed on behalf of the respondents. It is submitted in affidavit-in-reply that as per the recommendations of Medical Council of India, right from 1983 till date qualifications required for the post of Professor in Forensic Medicine is M.D. (Forensic Medicine). It is also further submitted in reply that considering the recommendations of the Medical Council of India, even the State Government has framed Recruitment Rules and as per the Recruitment Rules qualification required for the post of Professor (Forensic Medicine) is M.D. (Forensic Medicine). It is submitted that the petitioner was only M.S.(General Surgery), he was not having requisite qualifications as per the Recruitment Rules as well as the recommendations of the Medical Council of

India, and, therefore, the petitioner was not appointed. It is also further submitted in reply that during the pendency of the present Special Civil Application, the petitioner has submitted an application for voluntary retirement and before the same could be decided, the petitioner has voluntarily left his services. Shri Desai, learned Assistant Government Pleader has submitted that to the best of the information of the Department, the petitioner has left India and has settled abroad.

4. Learned Advocate for the petitioner is absent when the matter is called out.

5. Considering the pleadings and averments in the application, it is not in dispute that the petitioner is having qualification of M.S.(General Surgery) only. As per the recommendations of the Medical Council of India, right from 1983, required qualification for the post of Professor (Forensic Medicine) is M.D. (Forensic Medicine) and as per the Recruitment Rules which are framed on the recommendations of Medical Council of India, qualification required for the post of Professor (Forensic Medicine) is M.D. (Forensic Medicine).

6. Under the circumstances, when the petitioner is not having requisite qualification which is required for the post of Professor (Forensic Medicine) and when the petitioner is not appointed / promoted to the post of Professor (Forensic Medicine)

as having not qualified, it cannot be said that the respondents have committed any illegality and/or acted arbitrarily. On the contrary, the respondents are justified in not promoting the petitioner to the post of Professor as per recommendations of the Medical Council of India as well as considering the Recruitment Rules. The petitioner is not entitled for any relief as prayed for in the present Special Civil Application.

7. For the reasons stated above, the petition fails. Rule is discharged. However, there shall be no order as to costs.

[M.R.Shah, J.]

satish